IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Crl.MC.No. 5534 of 2003(B)

ST.333/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR

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PETITIONER: ACCUSED NOS 2 AND 3.

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1. V.G.GOPINATHAN, ADVOCATE, P.O.NATTIKA, THRIPRAYAR.

2. T.DIVAKARA MENON, THATTARATH HOUSE, PADIYAM P.O. THRISSUR TALUK, THRISSUR.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENTS: COMPLAINANT AND STATE.

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1. SUVARNALATHA, W/O.SOMASUNDARAN, NADUPARAMBIL HOUSE, NATTIKA AMSOM, REP. BY POWER OF ATTORNEY HOLDER, SOMASUNDARAN, NADUPARAMBIL HOUSE, NATTIKA AMSOM, THRIPRAYAR.

2. STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.P.V.CHANDRA MOHAN
PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.M.C.No.5534/2003-B

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Dated this the 19th day of September, 2007

O R D E R

The petitioners who are the accused Nos.2 and 3 in S.T.No.333/2003 in the court of the Judicial Magistrate of the First Class, Kodungallur, have sought for getting quashed the above proceedings contending that they have affixed signatures in the alleged document only as witnesses and the same was done in their professional capacity. The first petitioner is an Advocate and the second petitioner is the Advocate's clerk. It is mentioned in the petition that the first accused had initiated civil proceedings as O.S.No.938/1999 in the Munsif Court, Chavakkad and also filed an interim injunction as I.A.No.2218/1999. In the above proceedings he has also produced a licenced agreement allegedly executed by the complainant with respect to the property owned by the complainant. The case is that the above agreement is a forged one and that the first accused and accused Nos.2 and 3 who are the petitioners herein colluded and forged the above documents and, hence, they are indicted for the offences under Sections 465, 467 and 471 I.P.C. It is submitted that the police had filed a refer report in the matter and the proceedings impugned is the protest complaint filed. It was on the

basis of the above complaint that the F.I.R (Annexure-B) was registered by the police. The refer report is produced. The main contention is that with respect to a document produced in the court the proceedings has to be initiated only under Section 195 Cr.P.C. The bar under Section 195 Cr.P.C is practically the only contention, apart from the case that the petitioners have attested in the impugned documents only in their professional capacity.

I find that the contention with respect to the bar under Section 195 Cr.P.C cannot be upheld in view of the decision of the Apex Court in **Iqbal Singh Marwah v.Meenakshi Marwah [2005(4) SCC 370] [2005 (2) KLT SN-46]**. The court has specifically held that to attract section 195(1)(b)(ii) offence should have been committed during the time when the document was in custodia legis. Hence, the above contention of the petitioners has no merits. All the same, the petitioners may apply for discharge before the court below as suggested by the counsel for the petitioners. The court shall consider the same. I find there is no sustainable grounds to quash the proceedings initiated. The Crl.M.C is disposed of accordingly.

K.R.UDAYABHANU,
Judge

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